

Amendments to the Drawings:

The attached sheets of drawings include changes to Fig. 2 and Fig. 7 to meet the objections raised by the examiner. It was also noticed that a similar correction was necessary to Fig. 4. The first of these sheets, which includes Figs. 1-2 replaces the original drawing sheet 1. In Fig. 2 a reference line has been added to numeral 52. The second of these sheets, which includes Fig. 4 replaces original drawing sheet 2 and Fig. 4 has been corrected to add a reference line to numeral 36. The third of the sheets replaces original sheet 3 of the drawings on which Fig. 7 now includes a a reference line to numeral 72.

Attachment:

Replacement Sheets 1, 2 and 3

Annotated Sheets Showing Changes

REMARKS/ARGUMENTS

Applicant's attorney thanks the examiner for faxing a copy of the Office action. The Office action was not received in the mail because it had been mailed to an old address. A change of address was filed by applicant's attorney on January 24, 2005, however, the Office action mailed on January 12, 2006 was mailed to the previous address. Please take whatever steps are necessary to insure that future correspondence is mailed to the correct address on file in this application.

The Amendment:**In the Drawings and Specification:**

Corrected drawings of Figures 2, 4 and 7 are submitted in the substitute drawing sheets 1, 2 and 3 which are attached hereto.

The specification has been amended to eliminate the duplicate "." in the paragraph appearing in the first full paragraph on page 3.

In the Claims:

Claim 1 has been amended to define the tool shaft as *cylindrical* with a working end having a *circular cross section* and a slot open to the end of the shaft, extending longitudinally along the shaft *with smooth unbroken sidewalls*. The claim has also been amended to define the longitudinal segments as having *substantially equal, circular segmental cross sections having smooth, unbroken arcuate external walls*.

Claims 1 and 2 have been amended to correct the recitation of "means to transmit a torque" in response to the examiner's objection in paragraph 6 of the Office action.

Claim 8 has been amended to correct its dependency to claim 7, rather than claim 6 in response to the examiner's objection in paragraph 7 of the Office action.

Claims 1-6 and 9 remain under examination. Claims 11 and 12 have been canceled. Claims 7 and 8 are drawn to non-elected species.

The Rejections:

Claims 1, 2, 8 and 12 were rejected as objectionable under 35 U.S.C. §112. It is believed that the objections are obviated by this amendment.

Claims 1-3 and 6 were rejected as anticipated by Bergemann under 35 U.S.C. §102.

Claims 11 and 12 were rejected as anticipated by Osmar et al under 35 U.S.C. §102.

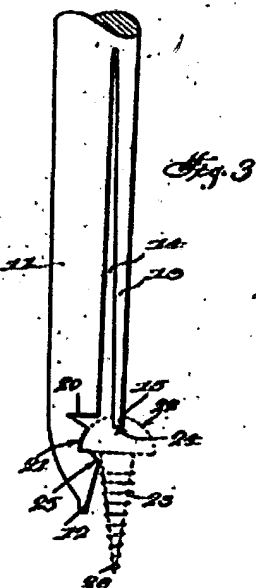
Claims 1, 2 and 4-6 were rejected as considered to be obvious from the teachings of Osmar et al in view of Hughes under 35 U.S.C. §103.

Applicant's Comments:

Support for the Claim Amendments:

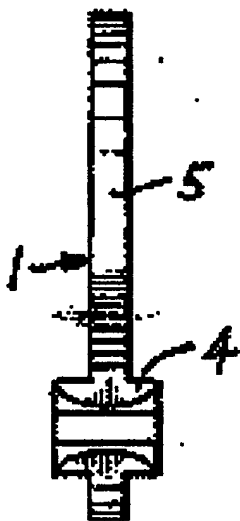
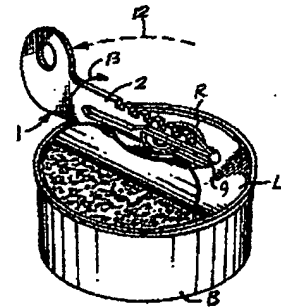
The amendments to the claims find support in the specification and drawings. On page 2, lines 12-13, the shaft is described as preferably cylindrical. All the drawings illustrate a cylindrical shaft having a smooth cylindrical wall, broken only at its working end by the slot 20 which extends longitudinally along the centerline of the cylindrical shaft, dividing the shaft into two segments which are shown to have equal, circular segmental cross sections, i.e., cross sections defined by a circular arc and cord. The slot is also shown to have smooth, unbroken side walls.

The References:



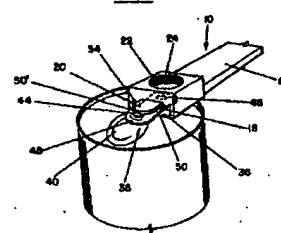
Bergemann discloses a tool for setting and driving conventional screws such as 23. The shank is shown as round with a v-shaped slot 14 to form an auxiliary blade 13. The blade 13 is formed to engage in the conventional straight slot 24 in the head of a common screw 23. The patent doesn't disclose the cross sectional shape of blade 13. If the blade has a circular segmental cross section, it necessarily must be very thin to permit its end to be inserted into the straight narrow slot 24 of screw 23. The side walls of the slot 14 are not smooth and unbroken, but have transverse grooves (notches) 21 and 20 to secure the edges of the heads of screws.

Osmar et al disclose a key shaped tool 1 for opening cans with a pull tab ring R. The key has a long slot 9 and a body which is essentially flat; the patent describes it as longer than it is wide and wider than it is thick. Square notches 7 are cut into the top and bottom edges of the flat body 2 of the tool; see Fig. 7 reproduced to the right.



The end view of the tool is shown in Fig. 3, of the patent which is reproduced to the left which shows a flat body 5 with a slot that has integral ribs which extend along the slot to provide reinforcement to the otherwise flat body. The patent describes use of the tool in at least two different methods; the most relevant of which appears at column 2, line 64 to column 3, line 21 which refers to Figs. 6 and 7 of the patent. In this method, it is suggested that the tool can be used to peel the can top by moving the tool into the position shown in Fig. 7 and then rotating the tool about its longitudinal axis. The patent does not discuss how the severed can top is to be removed from the tool..

Hughes discloses a tool for opening a conventional pop top soda can. The tool has an open box at one end of the tool handle. The opening 18 of the box receives the pull lever of the can, shown in Fig. 8, reproduced at the left. In this position, the user tilts the tool upwardly, and the tool rotates the lever of the pop top, causing the covering portion 40 of the pop top downwardly, into the can. None of the can elements such as the pull lever or the top of the can, is removed from the can. The examiner has relied on this patent as suggesting a dual segmented end of a tool which has one segment longer than the other, citing projection 20 of Hughes as the "longer segment."

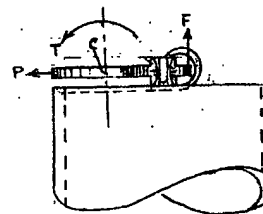


Applicant's Arguments:

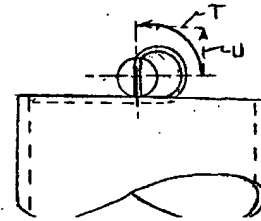
The rejection of claims 1-3 and 6 under 35 U.S.C. §112 is no longer applicable to the amended claims. The claims now recite that the segments of the cylindrical shaft have a segmental cross section of substantially equal cross sections, elements that are not present in Bergemann. Bergemann clearly shows that the blade 13 is of much lesser cross sectional area than the remainder of the tool shaft, and it is clear that blade 13 cannot be of substantially equal cross section to the remainder of the shaft since it would then not fit into the narrow slot 24 of screw 23.

The claims are also not obvious from Bergemann under 35 U.S.C. § 103 as any attempt to alter Bergemann by providing a cylindrical shaft or to provide segments of substantially equal segmental cross section would destroy the function of the tool

Osmar et al discloses a flat key which is disclosed as useful to remove a can top by rotation of the key, exemplified in Fig. 7. The most relevant feature of this patent is that it is the only reference cited by the examiner which is directed to the same use as the tool recited by the claims. Osmar et al, however, describe a flat tool, with a flat blade. In use of the key illustrated in Figs 6 and 7, the flat key shape of the tool will not provide any significant assistance to one suffering from arthritis. As one attempts to rotate or twist the key in the position shown in Fig. 7, the key will unavoidably slip or fold to a flat position on the can, with the flat side of the key resting on the can top, such as illustrated in the sketch to the right. If one attempts to twist the key in this position, the key will function only as a lever to apply an essentially upward thrust (F) to the can top. There will be little or no transverse component to the force applied to the can top. To proceed with removal of the can top, the user must then also pull the key (P) along the top of the can while twisting the key (T) about its center C to provide the necessary transverse tearing force to the can top.



Applicant's invention applies torque to a cylindrical shaft resting on the can top so that the shaft will roll across the top of the can (see the sketch to the right), providing both upward (U) and transverse (T) force components which are applied to the can top, resulting in tearing the can top from the can. It is not necessary to twist and pull the tool across the can top as required when using a flat key such as shown by Osmar et al.



Hughes discloses a tool for opening the ubiquitous pop top soda can. It is not intended for use with the pull tab cans having a failure line about the periphery of the can top such as described in this application and in the Osmar et al patent. The only purpose of the extended projection 20 on the end of the tool is to apply force to the downward pushing end 48 of the lever 38, which are all elements of the pop top. There is no suggestion in either Osmar et al or Hughes that the projection 20 would serve any useful purpose or function if incorporated into the Osmar et al tool.

The only reference which relates to the pull tab opening can is Osmar et al and that reference has no suggestion that there would be any advantage to lengthening one of the two half blades of body 5. Since the projection 20 in Hughes relates to an entirely different, pop top can, it would not be obvious to one skilled in the art to make the modification suggested by the examiner. Additionally, Hughes, as Osmar et al disclose flat bladed tools. There is thus no suggestion in any of the prior art to provide a tool with a cylindrical working end divided into two substantially equal circular segmental cross sections.

The claims also recite that the working end of the tool has smooth, unbroken exterior side walls. This is not present in Osmar et al, and there is no suggestion by Hughes to eliminate the notches 5 of Osmar et al. Applicant's invention has smooth exterior walls so that the severed can top will readily fall from the tool when the tool is held in a vertical orientation; see page 3, lines 14-17 of the specification. Notches in the exterior surface of the tool such as those shown at 5 by

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AMENDMENT A

of the can top can engage the notches.

In summary, the claims recite subject matter which is not suggested by the combination of Osmar et al and Hughes. These patents relate to opening entirely different types of cans, and the tool for opening pop top can disclosed by Hughes has no relevancy to a tool for opening the pull tab can tops which is the subject of the claimed invention. Hughes places a projection 20 on his tool for a function which is unique to pop top cans. The differences between applicant's claimed tool and that shown by Osmar et al are not obvious from Hughes as there is no suggestion in the prior art for combining any of the elements of Hughes in the Osmar et al tool.

The claims are of proper form and scope and define invention over the prior art. Applicant has corrected the Figures and description to eliminate the informalities noted by the examiner. It is therefore believed that the claims of the application are in condition for allowance and favorable reconsideration is solicited.

Respectfully submitted,


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